IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.22 OF 1991.

Parsu Zaryappa Pujari
R/o. Salgar,
Tal : Miraj,
Dist : Sangli. .. Appellant
(Original Defd.No.1)

vs.

Parvatibai Appanna Pujari & Ors
.. Respondents.
(Original Plaintiff)

Shri M.V.Sali, Advocate for the Appellant.

Mr.S.K.Chincholikar, Advocate for the Respondent.

CORAM ; S.R.SATHE, J.

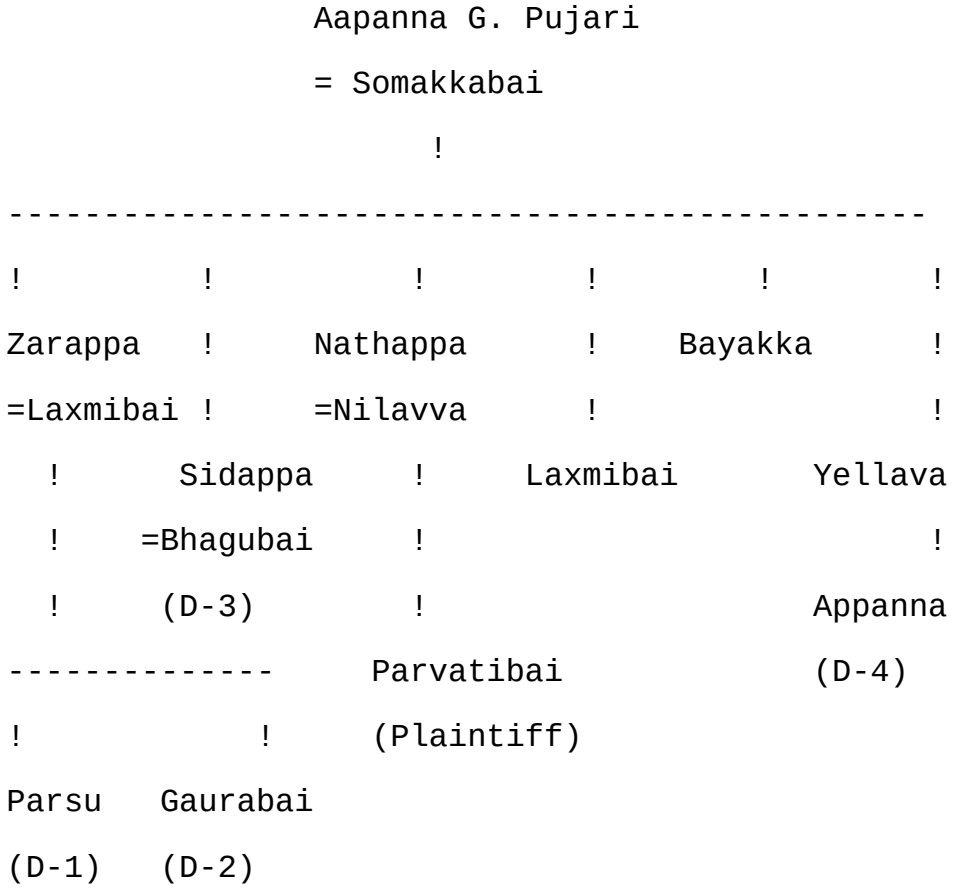
DATED ; 3rd September, 2004.

JUDGMENT :

1. Being aggrieved by the judgment and order passed by the Court of Additional District Judge, Sangli, in Regular Civil Appeal No.209 of 1985, whereby the judgment and order passed by the Court of Civil Judge, Junior Division, Miraj in Regular Civil Suit No. 253 of 1988 decreeing plaintiffs suit for partition and separate possession was

confirmed and appeal as well as cross objections were dismissed, the original defendant no.1 has preferred this second appeal.

2. In order to appreciate the facts giving rise to this appeal it would be worthwhile to reproduce the genealogy set out by the plaintiff.



3. The suit property consisting of

agricultural land as well as house property described in detail in para 1 of the plaint was the ancestral property of Zarappa, father of defendant nos.1 and 2, Sidappa (father of defendant no.3) and Nathappa. Sidappa died in the year 1947. After his death Bhagubai (defendant no.3) wife of deceased Sidappa adopted Apanna (Defendant no.4) the son of Yellava in the year 1947. Zarappa died in the year 1970. His wife Laxmibai pre-deceased Zarappa in the year 1969. The said properties are situated within the jurisdiction of Old Sangli Sansthan. As per the Sangli Sansthan Law, in the year 1935 Hindu Widow was given a right to claim partition in the joint hindu family. As per the said law, in the year 1941 Bhagubai i.e. Defendant no.3 and Nilavva i.e. plaintiffs mother asked Defendant Nos.1 and 2 father Zarappa as well as his brother Sidappa and Nathappa to give partition and seperate possession of their share. In the year 1944-45, the plaintiff’s mother Nilavva performed second marriage and as a result of the same plaintiff alone became the sole owner of her father’s 1/3rd share in the suit property. As partition by meets

and bounds had not taken place and plaintiff was residing with Zarappa he was cultivating the share of plaintiff. Infact, out of the said income he met the marriage expenses of plaintiff. As Bhagubai i.e. Defendant no.3 and Apanna i.e. Defendantno.4 had received their 1/3rd share they were not having any right, title and interest in the suit property. After the death of Zarappa, plaintiff infact got her name entered in the record of rights. However, the defendant no.1 got the said entry deleted and started denying the plaintiff's ownership of the suit property. She therefore filed the present suit for declaration that she is having one half share in the suit property and also claimed partition and separate possession of the same.

4. The defendant no.1 filed his written statement at exhibit 22 and opposed the suit claim. He contended that though in the plaint the plaintiff had averred that Nilavva had expired in the year 1940, the said statement is not correct and she is alive. According to him she had performed second marriage with one Bapurao

Birajdar. The Defendant further contended that even if it is assumed that Nilavva had received the share of Nathappa, during her lifetime, Parvatibai (i.e. plaintiff) is not entitled to get any share. He also denied the plaintiff's allegation that plaintiff's mother Nilavva has performed second marriage and as such she had no share in the property owned by plaintiffs father. According to defendant the suit property bearing Revision Survey No.59 i..e block no.267 is Devasthan property and as such not liable for partition. The defendants also denied the plaintiffs allegation that she was cultivating the suit land alongwith Zarappa. Lastly, the defendant contended that the plaintiff suit for declaration , partition and possession is barred law of limitation. Hence on all these grounds the defendant no.1 prayed for dismissal of the suit.

5. On these pleading the learned trial court framed issued at exhibit 26. After considering the evidence adduced by both the parties the trial court came to the conclusion that plaintiff has proved that she is having 1/2 share in the suit

property and except the land bearing gut no.267 the rest of the property is liable for partition and the plaintiff is entitled to get one half share in the suit property. He, therefore, decreed the plaintiff's suit.

6. The defendant no.1 challenged the above mentioned order by filing first appeal in the district Court, Sangli. After considering the arguments advanced by both the learned Advocates, the first appellate court came to the conclusion that plaintiff has proved that she is having one half share in the suit property and she is entitled for partition and separate possession as prayed for. He, therefore, confirmed the finding of the trial court and dismissed the appeal as well as the cross objections filed by the original plaintiff.

7. The defendant no.1 has challenged the order of the first appellate court in this second appeal. From the perusal of the record it appears that at the time of admission of this appeal on 16.1.1991 this court has passed following order

"Admit. Grounds no.3 as formulated would be the substantial question of law in the second appeal". The said ground no.3 is as under :

> "A family partition took place between Zarappa and Defd. No.3 since then Defd.No.3 is not seperate possesion of her 1/3rd share and suit properties are the remaining properties - after this partition- Defds.Nos.1 and 2 are in possession of these properties."

8. In this appeal before me Shri Sali, the learned Advocate for the defendant has urged only two points. Firstly, he submitted that plaintiff was infact not a co-parcener and as such was not entitled to get any share in the suit property of her deceased father. Secondly, he canvassed before me that after the death of zarappa’s brothers the suit property was given to Zarappa by way of survivalship and he had become the exclusive owner of the suit property. He, therefore, submitted that both the courts below have erred in holding that plaintiff has one half

share in the suit property. He, therefore, submitted that the appeal be allowed and the plaintiffs suit be dismissed. As against this the learned Advocate for the plaintiff supported the judgment and order passed by the first appellate court.

9. From the perusal of the pleadings and the evidence on record it is very clear that the genealogy set out in the plaint is infact not disputed. It is an admitted fact that after the death of plaintiff's father, plaintiff's mother had performed second marriage. Similarly it is also admitted that Bhagubai had taken Apanna in adoption. Though defendant had contended that plaintiff had no share in the suit property in cross examination he has specifically admitted that partition between Zarappa and Bhagubai had taken place in the year 1960 and at that time 1/3rd share of Bhagubai was seperated. This portion of the property is infact now in possession of Appanna. Ofcourse, so far as the land bearing survey no.267 which is trust property is concerned the same is shown as common between

the parties. The plaintiff has produced a copy of the earlier partition deed at exhibit 40 alongwith marathi transcription. Execution of this partition deed is infact not challenged. It is also not in dispute that the suit property was situated in Sangli Sansthan and as per the law then existing in the said Sansthan, widows had a right to claim maintenance or to claim share in the co-parceners property. Infact, as a result of such provision share was given to Bhagubai. It appears that at that time plaintiff was living with Zarappa and as such he took 2/3rd share and 1/3rd share was given to Bhagabai. It is also admitted that Nilavva, mother of the present plaintiff performed second marriage and as such she was not considered in the earlier partition. So far as her share was concerned, it reverted to her husband and devolved on his heirs. So, there is no substance in the contention of the learned advocate for the plaintiff appellant that plaintiff had no share in the suit property. Infact we find that defendant no.1 has also admitted in his deposition that plaintiff is having one half share in the suit property. It

must also be noted that admittedly previously there was a suit between defendant no.1 and his sister Gaurabai. It was Regular Civil Suit No.54 of 1974 in which Gaurabai had claimed 1/4th share in the suit property. Admittedly, the said suit has been decreed in favour of Gaurabai. Thus, so far as the suit property is concerned, plaintiff has established that she was having one half share in the same. Thus, from the perusal of the judgments of both the courts below, it is very clear that both the courts below have properly taken into consideration the entire evidence on record and the position of law and correctly held that plaintiff is having one half share in the suit property except the property bearing gut no 267 which is the trust property. There is no reason to interfere with the concurrent finding of the courts below. In this view of the matter there is no substance in the appeal. Appeal is dismissed.

Under the circumstances, parties to bear their own cost.

(S.R.Sathe, J)

JUDGMENT :

1. Being aggrieved by the judgment and order passed by the Court of